

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LYNN ANNE SHEPHERD,
Plaintiff,

v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

NO. CV-11-0271-RHW

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT; GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Before the Court are Plaintiff's Motion for Summary Judgment, ECF No. 23, and Defendant's Motion for Summary Judgment, ECF No. 26. The motions were heard without oral argument. Plaintiff is represented by Maureen J. Rosette. Defendant¹ is represented by Assistant United States Attorney Pamela De Rusha and Special Assistant United States Attorney Michael S. Howard.

I. Jurisdiction

On June 6, 2007, Plaintiff protectively filed a Title II application for disability insurance benefits (DIB) and a Title XVI application for supplemental security income (SSI). Plaintiff alleges she has been disabled beginning November

¹Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin is substituted for Michael J. Astrue as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of 42 U.S.C. § 405(g).

1 29, 2005.

2 Her application was denied initially and again denied on reconsideration. A
 3 timely request for a hearing was made. On April 2, 2009, Plaintiff appeared at a
 4 hearing in Spokane, Washington before Administrative Law Judge (ALJ) R. S.
 5 Chester. R. Thomas McKnight, Ph.D, a medical expert and Tom L. Moreland, a
 6 vocational expert, also participated. Plaintiff was represented by Maureen Rosette.

7 The ALJ issued a decision on May 6, 2009, finding that Plaintiff was not
 8 disabled. Plaintiff timely requested review by the Appeals Council, which granted
 9 her request for review. Upon review, the Appeals Council adopted the ALJ's
 10 findings and conclusions that Plaintiff was not disabled. The Appeals Council's
 11 decision became the final decision of the Commissioner. *See* 20 C.F.R. §§
 12 404.981, 422.10.

13 Plaintiff filed a timely appeal with the U.S. District Court for the Eastern
 14 District of Washington on July 27, 2011. The instant matter is before this Court
 15 pursuant to 42 U.S.C. § 405(g).

16 **II. Sequential Evaluation Process**

17 The Social Security Act defines disability as the "inability to engage in any
 18 substantial gainful activity by reason of any medically determinable physical or
 19 mental impairment which can be expected to result in death or which has lasted or
 20 can be expected to last for a continuous period of not less than twelve months."
 21 42 U.S.C. § 423(d)(1)(A). A claimant shall be determined to be under a disability
 22 only if her impairments are of such severity that the claimant is not only unable to
 23 do her previous work, but cannot, considering claimant's age, education and work
 24 experiences, engage in any other substantial gainful work which exists in the
 25 national economy. 42 U.S.C. §423(d)(2)(A).

26 The Commissioner has established a five-step sequential evaluation process
 27 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a)(4); *Bowen*
 28 *v. Yuckert*, 482 U.S. 137, 140-42 (1987).

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1 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R. §
 2 404.1520(b). Substantial gainful activity is work done for pay and requires
 3 compensation above the statutory minimum. 20 C.F.R. § 404.1574; *Keyes v.*
 4 *Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in
 5 substantial activity, benefits are denied. 20 C.F.R. § 404.1571. If he is not, the ALJ
 6 proceeds to step two.

7 Step 2: Does the claimant have a medically-severe impairment or
 8 combination of impairments? 20 C.F.R. § 404.1520(c). If the claimant does not
 9 have a severe impairment or combination of impairments, the disability claim is
 10 denied. A severe impairment is one that lasted or must be expected to last for at
 11 least 12 months and must be proven through objective medical evidence. 20
 12 C.F.R. § 404.1508-09. If the impairment is severe, the evaluation proceeds to the
 13 third step.

14 Step 3: Does the claimant's impairment meet or equal one of the listed
 15 impairments acknowledged by the Commissioner to be so severe as to preclude
 16 substantial gainful activity? 20 C.F.R. § 404.1520(d); 20 C.F.R.
 17 § 404 Subpt. P. App. 1. If the impairment meets or equals one of the listed
 18 impairments, the claimant is conclusively presumed to be disabled. *Id.* If the
 19 impairment is not one conclusively presumed to be disabling, the evaluation
 20 proceeds to the fourth step.

21 Step 4: Does the impairment prevent the claimant from performing work she
 22 has performed in the past? 20 C.F.R. § 404.1520(e). If the claimant is able to
 23 perform her previous work, she is not disabled. *Id.* If the claimant cannot perform
 24 this work, the evaluation proceeds to the fifth and final step.

25 Step 5: Is the claimant able to perform other work in the national economy
 26 in view of her age, education, and work experience? 20 C.F.R. § 404.1520(f).

27 The initial burden of proof rests upon the claimant to establish a *prima facie*
 28 case of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098

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1 (9th Cir. 1999). This burden is met once a claimant establishes that a physical or
 2 mental impairment prevents her from engaging in her previous occupation. *Id.* At
 3 step five, the burden shifts to the Commissioner to show that the claimant can
 4 perform other substantial gainful activity. *Id.*

5 **III. Standard of Review**

6 The Commissioner's determination will be set aside only when the ALJ's
 7 findings are based on legal error or are not supported by substantial evidence in
 8 the record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)
 9 (citing 42 .S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
 10 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."
 11 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975). Substantial
 12 evidence is "such relevant evidence as a reasonable mind might accept as adequate
 13 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the
 14 ALJ's denial of benefits if the evidence is susceptible to more than one rational
 15 interpretation, one of which supports the decision of the administrative law judge.
 16 *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). "If the evidence can
 17 support either outcome, the court may not substitute its judgment for that of the
 18 ALJ." *Matney*, 981 F.2d at 1019.

19 A decision supported by substantial evidence will be set aside if the proper
 20 legal standards were not applied in weighing the evidence and making the
 21 decision. *Brawner v. Secretary of Health & Human Servs.*, 839 F.2d 432, 433 (9th
 22 Cir. 1988). An ALJ is allowed "inconsequential" errors as long as they are
 23 immaterial to the ultimate nondisability determination." *Stout v. Comm'r, Soc. Sec.*
 24 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

25 **IV. Statement of Facts**

26 The facts have been presented in the administrative transcript and the ALJ's
 27 decision and will only be summarized here.

28 At the time of the hearing, Plaintiff was 51 years old. She attended school

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1 up to the 9th grade. She does not have her GED. She dropped out of high school
 2 because her father passed away and she was pregnant. (Tr. 382.) She is single and
 3 has two children.

4 She began working in 1997 part-time. Prior to that, she was a stay at home
 5 mom. (Tr. 158.) She worked at the Northern Quest Casino beginning in 2002 until
 6 her termination in November 29, 2005. She was terminated because of alleged
 7 inappropriate displays of affection on the gaming floor. (Tr. 50.)

8 Plaintiff alleges she is disabled because of mental health issues, chronic
 9 obstructive pulmonary disease (COPD) and neck pain and back pain from
 10 osteoarthritis and osteopenia. (Tr. 62.)

11 **V. The ALJ's findings**

12 The ALJ noted that Plaintiff last met the insured status requirements of the
 13 Social Security Act through March 31, 2010. (Tr. 22.)

14 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
 15 activity since November 29, 2005, the amended alleged onset date. (Tr. 22.)

16 At step two, the ALJ found Plaintiff has the following severe physical and
 17 mental impairments: borderline intellectual functioning and a personality disorder
 18 (Tr. 23.)

19 At step three, the ALJ found Plaintiff did not have an impairment or
 20 combination of impairments that meets or medically equals one of the listed
 21 impairments in 20 CFR Part 404, Subpart P, Appendix 1. (Tr. 25.) The ALJ
 22 considered impairments listed under Listing 12.05 (Mental Retardation) and
 23 Listing 12.08 (Personality Disorder). (Tr. 25.) The ALJ concluded that because
 24 Plaintiff's mental impairments do not cause at least two "marked" limitations or
 25 one "marked" limitation and "repeated" episodes of decompensation, the
 26 paragraph B criteria was not satisfied. (Tr. 26.)

27 The ALJ determined Plaintiff has the residual functional capacity to perform
 28

1 the full range of light work as defined in 20 C.F.R. § 404.1567(b);² except she can
 2 only perform occasional kneeling, crouching, crawling, and climbing of ladders
 3 ropes, and scaffolds. She needs to avoid concentrated exposure to fumes, odors,
 4 dusts and hazards such as unprotected heights and machinery, is limited to
 5 performing simple or well-learned tasks, can only have superficial or limited
 6 contact with the general public, and is limited to non-collaborative work with co-
 7 workers. (Tr. 27.)

8 At step four, the ALJ concluded Plaintiff was able to perform past relevant
 9 work as a fast foods worker. (Tr. 33.)

10 The ALJ did not conduct an alternative step five analysis.

11 **VI. The Appeals Council's Decision**

12 The Appeals Council reviewed the ALJ's decision that Plaintiff was not
 13 disabled. It adopted the ALJ's statements regarding the pertinent provisions of the
 14 Social Security Act, the SSA's regulations and rulings, the issues in the case, and
 15 the evidentiary facts. (Tr. 4.) It also adopted the ALJ's findings at step one, three,
 16 and four of the sequential evaluation, namely, Plaintiff has not engaged in
 17 substantial gainful activity since November 29, 2005, Plaintiff has severe

18 ²(b) Light work involves lifting no more than 20 pounds at a time with frequent
 19 lifting or carrying of objects weighing up to 10 pounds. Even though the weight
 20 lifted may be very little, a job is in this category when it requires a good deal of
 21 walking or standing, or when it involves sitting most of the time with some
 22 pushing and pulling of arm or leg controls. To be considered capable of
 23 performing a full or wide range of light work, you must have the ability to do
 24 substantially all of these activities. If someone can do light work, we determine
 25 that he or she can also do sedentary work, unless there are additional limiting
 26 factors such as loss of fine dexterity or inability to sit for long periods of time.

27
 28 20 C.F.R. § 404.1567(b).

1 impairments that do not meet or equal in severity an impairment in the Listing of
 2 Impairments, and she is capable of performing past relevant work. (Tr. 4.)

3 The Appeals Council disagreed with the ALJ's findings at step two.
 4 Specifically, the Appeals Council found that in addition borderline intellectual
 5 functioning and a personal disorder, Plaintiff has the following severe
 6 impairments: status post cervical fusion, chronic obstructive pulmonary disease,
 7 but she does not have an impairment or combination of impairments that meets the
 8 Listings. (Tr. 6.) The Appeals Council adopted the ALJ's determination of
 9 Plaintiff's residual functional capacity. (Tr. 6.)

10 The Appeals Council found that the limitations on Plaintiff's ability to
 11 perform work-related activities, based on her residual functional capacity, did not
 12 preclude performance of past relevant work as a fast food worker. (Tr. 6.). As
 13 such, the Appeals Council concluded Plaintiff was not disabled.

14 **VII. Issues for Review**

15 Plaintiff presents the following issues for review:

- 16 1. Substantial evidence does not support the ALJ's conclusion in that she
 17 is more limited from a physical standpoint, as well as a psychological standpoint;
- 18 2. The ALJ erred in failing to properly consider the opinions of her treating
 19 and examining sources regarding her physical and mental residual functional
 20 capacity.

21 **VIII. Discussion**

22 **A. Finding of Severe Impairments**

23 Plaintiff argues the ALJ erroneously determined that she did not have
 24 specific severe physical impairments. The ALJ found that Plaintiff had severe
 25 impairments of borderline intellectual functioning and a personality disorder. (Tr.
 26 23.) The Appeals Council agreed with Plaintiff's arguments to a certain point,
 27 finding that she had additional severe impairments of status post cervical fusion

1 and chronic obstructive pulmonary disease. (Tr. 5.) But, it did not find or address
 2 whether Plaintiff suffered from degenerative joint disease, osteopenia and
 3 migraines, which Plaintiff asserts affects her ability to work. The ALJ and the
 4 Appeal Council concluded that Plaintiff was capable of light duty. Plaintiff also
 5 challenges this determination. The first issue the Court must address, then, is
 6 whether the ALJ and the Appeals Council erred in not finding her degenerative
 7 joint disease, osteopenia and migraines to be severe impairments.

8 “An impairment or combination of impairments may be found ‘not severe
 9 *only if* the evidence establishes a slight abnormality that has no more than a
 10 minimal effect on an individual’s ability to work.’” *Webb v. Barnhart*, 433 F.3d
 11 683, 686 (9th Cir. 2005). The analysis at step two is considered “a *de minimis*
 12 screening device [used] to dispose of groundless claims.” *Id.* (quoting *Smolen*,
 13 80F.3d at 1290. An ALJ may find that a claimant lacks a medically severe
 14 impairment or combination of impairments only when his conclusion is “clearly
 15 established by medical evidence.” *Id.* In reviewing the ALJ’s determination, the
 16 Court considers “whether the ALJ had substantial evidence to find that the
 17 medical evidence clearly established that [Plaintiff] did not have a medically
 18 severe impairment or combination of impairments.” *Id.*

19 With respect to Plaintiff’s allegations that she suffered from arthritis,
 20 osteopenia, bone pain, and back pain, the ALJ concluded the bulk of the medical
 21 evidence established these impairments to be non-severe. With respect to
 22 Plaintiff’s allegations that she suffered from migraines, the ALJ found there was
 23 no neurological testing or medication for migraine headaches in the record to
 24 establish any impairment.

25 The ALJ’s and the Appeals Council’s determinations that Plaintiff’s
 26 arthritis, osteopenia, bone pain, back pain, and migraines are non-severe are
 27 supported by the record. Although Plaintiff complains of chronic pain and
 28

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1 migraines, there is no diagnosis of migraines, no treatment notes, and no
 2 prescriptions for medications to treat Plaintiff's migraines.³ Plaintiff visited Dr.
 3 Montgomery on December 12, 2007. During that visit, she reported that she had
 4 been having more headaches recently, and had a long history of migraines. She
 5 indicated she had tried other medications in the past and they did not work. Dr.
 6 Montgomery's instructions were to continue with over-the-counter medicine. This
 7 notation does not provide the support to find that her migraines have more than a
 8 minimal effect on an individual's ability to work, especially in light of the fact
 9 that Plaintiff reported she had a long history of migraines, yet she was able to
 10 maintain continuous employment from 2002 to 2005 at Northern Quest Casino.

11 Likewise, the record is devoid of any prescriptions for pain medications for
 12 her bone pain and back pain.⁴ There is nothing in the record that refers to or
 13 suggests any type of pain management plan. Although Plaintiff complained of hip
 14 pain, x-rays of her back and hip indicate she has mild or minimal hip dysplasia,
 15 which the doctor specifically concluded would not affect her ability to work. (Tr.
 16 354.) On February 4, 2008, she visited the emergency room for acute neck strain
 17 following a near fall. (Tr. 585.) It does not appear she was given a prescription for
 18 pain medications. (Tr. 585.) A series of x-rays of Plaintiff's lumbar spine was

19 ³Plaintiff indicated she is taking Lithium for her mood disorders and takes over-
 20 the-counter Excedrin Migraine or Tylenol for her headaches. (Tr. 298.) On April
 21 2, 2009, she indicated that Dr. Montgomery was prescribing medicine for her
 22 migraines, but the prescription was not substantiated any where in the record. (Tr.
 23 702.)

24 ⁴On October 31, 2008, Plaintiff saw Dr. Tubbs for a follow-up visit for back
 25 pain. She reported the pain had improved somewhat over the past week despite her
 26 not taking any pain medication. (Tr. 710.) She also indicated she was not
 27 interested in going to physical therapy. (Tr. 711.)

1 taken in May, 2007, and Dr. Handy concluded they were an “essentially negative
 2 lumbar spine series.” (Tr. 413.)

3 The ALJ found Plaintiff was not credible with respect to the intensity,
 4 persistence, or functionally limiting effects of pain or other symptoms. (Tr. 29.) In
 5 doing so, the ALJ considered Plaintiff’s inconsistent statements to her health care
 6 providers and at the hearing. The ALJ noted that her allegations of “bone”
 7 problems and neck “popping” are not supported by the record; rather they are
 8 contradicted by the orthopedic evaluation of Dr. Bagby. (Tr. 30.) The ALJ found
 9 Plaintiff evasive and misrepresented facts. (Tr. 31.). The ALJ noted that medical
 10 examiners have questioned her physical allegations based on their medical
 11 findings. (Tr. 31.) The ALJ properly engaged in the two step process to evaluate
 12 Plaintiff’s testimony regarding subjective pain.⁵ The ALJ’s credibility
 13 determinations are supported by the record.

14 The ALJ and the Appeals Council did not err in concluding that Plaintiff’s
 15 alleged impairments of arthritis, osteopenia, bone pain, back pain, and migraines

16 ⁵In order to find a claimant’s testimony regarding severity of his impairments
 17 unreliable, the ALJ must make “a credibility determination with findings
 18 sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily
 19 discredit claimant’s testimony.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th
 20 Cir. 2008). (citation omitted). In doing so, the Court engages in a two-step
 21 analysis. First, the ALJ must determine whether the claimant has presented
 22 objective medical evidence of an underlying impairment ‘which could reasonably
 23 be expected to produce the pain or other symptoms alleged.’” *Lingenfelter v.*
 24 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007). Once a “claimant meets this first test,
 25 and there is not evidence of malingering, the ALJ can reject the claimant’s
 26 testimony about the severity of her symptoms only by offering clear and
 27 convincing reasons for doing so.” *Id.*

1 are non-severe. Substantial evidence supports this conclusion.

2 **B. Residual Functional Capacity**

3 Plaintiff argues she is more limited from a physical, as well as a
 4 psychological, standpoint. Consequently, the ALJ erred in determining her
 5 Residual Functional Capacity.

6 “When there is conflicting medical evidence, the Secretary must determine
 7 credibility and resolve the conflict.” *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th
 8 Cir. 1992). More weight is given to a treating physician’s opinion than to the
 9 opinion of a non-treating physician because a treating physician is employed to
 10 cure and has greater opportunity to know and observe the patient as an individual.
 11 20 C.F.R. § 416.927(d)(1); *see also Andrews v. Shalala*, 53 F.3d 1035, 1040-41
 12 (9th Cir. 1995). Likewise, greater weight is given to the opinion of an examining
 13 physician than a non-examining physician. *Andrews*, 53 F.3d at 1041. Opinions
 14 of physicians who examined the claimant only once should be given less weight
 15 than the physicians who treated her. 20 C.F.R. § 404.1527; *Benecke v. Barnhart*,
 16 379 F.3d 587, 592 (9th Cir. 2004).

17 **i. Physical Limitations**

18 There are conflicting testimony in the record regarding Plaintiff’s physical
 19 limitations. In 2006, Dr. Phillips examined Plaintiff and found her to be capable
 20 of light exertional work. (Tr. 262.) In 2007, Dr. Bagby, after a thorough and
 21 comprehensive orthopedic evaluation, found Plaintiff capable of performing light
 22 exertional work. (Tr. 565.) In September, 2007, Dr. Yurchak reviewed Plaintiff’s
 23 records and indicated that Plaintiff was capable of a modified range of light work.
 24 (Tr. 513.)

25 On the other hand, in February, 2006, Dr. Top Sky found Plaintiff to be
 26 limited to sedentary exertional work. (Tr. 374.). In May, 2007, Christina Riebe,
 27 ARNP, completed a physical evaluation. (Tr. 481-82.) She concluded Plaintiff

1 would be limited to sedentary work and would have limited mobility, agility, and
 2 flexibility in bending, climbing, crouching, handling, kneeling, pulling, pushing,
 3 reaching, sitting, and stooping. (Tr. 389.)

4 Dr. Top Sky was Plaintiff's treating physician for a period of time within
 5 the relevant time period at issue. (Tr. 31.) If the treating doctor's opinion is
 6 contradicted by another doctor, the ALJ may not reject this opinion without
 7 providing "specific and legitimate reasons" supported by substantial evidence in
 8 the record for doing so." *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).

9 The ALJ gave limited weight to Dr. Top Sky's opinion for the following
 10 reason: (1) no indication of any tests to support her findings relative to the
 11 degenerative joint disease/osteopenia being present; (2) no tests that determined
 12 level of severity which would support work level to sedentary; and (3) these
 13 findings are contradicted by the orthopedic evaluations and radiological studies
 14 which found no evidence of degenerative joint disease.⁶ (Tr. 31.) The ALJ also
 15 noted that ARNP Riebe found Plaintiff's osteopenia to have no level of severity,
 16 which corresponded to having "no interference with the ability to perform basic
 17 work-related activities." (Tr. 24.)

18 The ALJ did not provide explicit reasons for rejecting ARNP Riebe's
 19 opinion that Plaintiff was limited to only sedentary work. ARNP Riebe is not an
 20 acceptable medical source. 20 C.F.R. 404.1502. The ALJ may only discount
 21 testimony from these "other sources" if the ALJ "gives reasons germane to each
 22 witness for doing so." *Moline v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). As
 23 the SSR-06-03p explains, there is a distinction between what an adjudicator must
 24 consider and what the ALJ must explain in the disability determination. At the
 25

26 ⁶The ALJ also theorized that possibly Dr. Top Sky may have offered the
 27 opinion in an effort to assist Plaintiff. (Tr. 31.) There is nothing in the record that
 28 would support this reason for giving Dr. Top Sky's opinion less weight.

1 minimum, the ALJ should ensure that the discussion of the evidence allows the
 2 claimant or subsequent reviewer to follow the adjudicator's reasoning. SSR-06-
 3 06p. Here, it is clear the ALJ considered Riebe's opinion, as the ALJ referred to
 4 ARNP Riebe's conclusions in his opinion. (Tr. 24.) The ALJ did not err in failing
 5 to specifically cite to ARNP Riebe's opinion, given that he gave limited weight to
 6 Dr. Top Sky's opinion that also provided for sedentary limitations.

7 The ALJ gave specific and legitimate reasons to give only limited weight to
 8 Dr. Top Sky's and Riebe's opinion that Plaintiff is limited to sedentary work.
 9 Moreover, substantial evidence supports finding that Plaintiff's physical
 10 limitations result in a residual functional capacity that includes light work, as
 11 reflected in Dr. Bagby's and Dr. Phillips's opinions. Notably, Plaintiff testified
 12 that on good days, she can walk up to 5 miles and routinely walks 2 to 3 miles in
 13 the summer. (Tr. 72-3.) This is consistent with someone who can perform light
 14 work.

15 **ii. Psychological Limitations**

16 Plaintiff argues the residual functional capacity does not accurately reflect
 17 her mental limitations. The residual functional capacity limited Plaintiff to
 18 performing simple or well-learned tasks, having only superficial or limited
 19 contact with the general public, and being limited to non-collaborative work with
 20 co-workers. (Tr. 27.)

21 Amy Robinson, M.S. opined that Plaintiff had moderate cognitive
 22 difficulties and marked social difficulties. (Tr. 377-80) This report was signed off
 23 by Dr. W. Scott Mabee, Ph.D. (Tr. 385.) Ashlie Hagen, M.S. opined that Plaintiff
 24 had moderate to severe cognitive and social limitations. (Tr. 544-48.) This report
 25 was also signed off by Dr. Mabee. (Tr. 554.)

26 The ALJ gave little weight to Ms. Robinson and Ms. Hagen's opinions
 27 because they did not take into account Plaintiff's ability to function within the
 28 work force for many years with her diagnosed conditions. He instead relied on

1 Dr. McKnight's testimony that Plaintiff was able to work. Dr. McKnight took into
2 consideration the fact that Plaintiff's borderline intellectual functioning and
3 personality disorder were present during the time that she worked at Northern
4 Quest Casino for over three years. (Tr. 29.) As the ALJ explained, "In terms of
5 the claimant's alleged mental impairments of a borderline personality disorder
6 and borderline intellectual functioning, the undersigned notes such to be lifelong
7 conditions and which did not preclude the claimant from working for several
8 years with earnings over \$18,000 a year for four years straight at the same job."
9 (Tr. 29.)

10 Also, the ALJ noted that while Plaintiff testified she had run-ins with her
11 supervisors at her job at Northern Quest, she also explained she was fired for
12 alleged public display of affection on the casino floor with her boyfriend while
13 working, not problems with her supervisor, her co-workers, or the public. (Tr.
14 29.) The ALJ also noted that various mental health tests were deemed invalid due
15 to Plaintiff's over-reporting her mental pathology. (Tr. 30.) All valid mental
16 status examinations were within normal limits. (Tr. 30.) The ALJ noted that
17 Plaintiff's alleged memory problems are not supported in the record as Dr.
18 Quackenbush found her memory to be functioning at the high average range. (Tr.
19 30.) Also, the ALJ relied on the fact that Plaintiff over-reported her symptoms
20 with respect to her mental conditions.

21 The ALJ did not err in rejecting Ms. Robinson and Ms. Hagen's opinions.
22 The ALJ gave specific and legitimate reasons for rejecting these opinions.

23 As such, the residual functional capacity accurately reflects Plaintiff's
24 abilities, and therefore, the ALJ did not err in concluding that Plaintiff is capable
25 of performing past relevant work as a fast food worker.

26 **IX. Conclusion**

27 Plaintiff has not met her burden of showing the ALJ committed legal error
28 or that his conclusion that Plaintiff was not disabled from November 29, 2005 to

1 May 6, 2009, is not supported by substantial evidence. The ALJ properly found
2 that Plaintiff was capable of performing past relevant work as fast food worker
3 and properly found that she is not disabled.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Plaintiff's Motion for Summary Judgment, ECF No. 23, is **DENIED**.
6 2. Defendant's Motion for Summary Judgment, ECF No. 26, is
7 **GRANTED**.
8 3. The decision of the ALJ denying benefits is **affirmed**.
9 4. The District Court Executive is directed to enter judgment in favor of
10 Defendant and against Plaintiff.

11 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
12 file this Order and provide copies to counsel, and **close the file**.

13 **DATED** this 9th day of October, 2013.

14
15
16 s/Robert H. Whaley

17 ROBERT H. WHALEY
18 United States District Judge

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20 Q:\RHW\aCIVIL\2011\Shepherd (SS)\sj.wpd